

**JOHN F. RYAN COUNSELOR AT LAW
ATTORNEYS FOR PLAINTIFF
320 8TH AVENUE, SUITE 2R
BROOKLYN, NEW YORK 11215**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Case No.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA
as subrogee of USR SUPERCO, Inc., and
BERSHIRE FASHIONS, Inc.

Plaintiff,

vs.

EVERGREEN MARINE (UK), LTD.,
dba "EVERGREEN LINE," and
CHINA INT'L FREIGHT CO., LTD.

COMPLAINT

Defendant.

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COMPLAINT

NOW COMES Plaintiff, National Union Fire Insurance Company
of Pittsburgh, PA, as subrogee of USR SUPERCO, INC., and BERKSHIRE
FASHIONS, Inc. hereinafter referred to as National Union or Plaintiff by its
counsel John F. Ryan Counselor At Law, and complaining of the Defendants,
EverGreen Marine (UK), Ltd., dba "EVERGREEN LINE, hereinafter referred to
as EverGreen Line and China Int'l Freight Co., Ltd., hereinafter referred to as
CIF or jointly as Defendants:

1. Plaintiff, at all relevant times, is a Marine Cargo Underwriter and Insurance Company with an office and place of business at 175 Water Street, New York, NY 10038. That Plaintiff did issue to both USR SUPERCO, Inc., and Berkshire Fashions, Inc. a policy of marine cargo insurance which provided insurance coverage for, among other things, the shipments and cargo described more fully in Schedules A and B, which are attached to this complaint and incorporated by reference. That Plaintiff is the duly subrogated insurer of the consignees, and/or owners of the shipment described in the attached Schedules and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipments, as their respective interest may ultimately appear and Plaintiff is entitled to maintain this action.
2. Defendant, Evergreen Marine (UK), Ltd., dba "EverGreen Line" was now and is a business entity organized and existing under foreign law with an office and principal place of business at 160 Euston Road, London, England NW1 2DX.
3. Defendant, China Int'l Freight Co., Ltd., was now and is a business entity organized and existing under foreign law with an office and principal place of business at 2F, No. 90, Section1, Jianguo North Road , Zhongshan District, Taipei 104, Taiwan (R.O.C.) and has

designated Distribution, Inc., located at 1999 Harrison Street, Suite 650, Oakland, CA 94612 as its agent for the receipt of service of process.

4. At all times material, Defendants held themselves out as a carrier of goods by sea for hire and that on or about the dates set forth in Schedules A and B did issue the bills of lading identified in Schedules A and B for shipment aboard M/V EVER LIBERAL Voyage 039E for a voyage from Shanghai, China to Los Angeles, CA where the shipments were to be discharged and transshipped and delivered to the place of delivery set out in Schedules A and B.
5. This action is comprised of admiralty and maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and this Honorable Court has subject matter jurisdiction pursuant to 28 U.S.C. Sect. 1331 and 1333..
6. The United States District Court for the Southern District of New York is the proper venue for this action by virtue of the forum selection clause contained in the operative bills of lading, sea waybills, terms and conditions of service, and/or contracts of carriage for the shipments at issue. Both Defendants have consented to the personal jurisdiction of this Honorable Court by virtue of the referenced same forum selection clauses.

7. Plaintiff's business is, among other things, to issue marine insurance policies to provide insurance coverage for damages to shipments of merchandise while in transit, including the shipments set out in Schedules A and B attached hereto. That Plaintiff's insureds presented to Plaintiff claims for the damages described in this complaint. The Plaintiff was obligated under the terms of the insurance policy issued by Plaintiff to pay and it did pay the claims presented by both USR Superco, Inc., and Berkshire Fashions, Inc. After payment of said claim National Union became and is now entitled to maintain this action as subrogated underwriter and does bring it on its' own behalf as well as on behalf of its insureds and for the interest of all parties who may be or become interested in said shipment.
8. That on or about December 23, 2020 Defendants issued the bills of lading identified in Schedules A and B for the shipments identified in the Schedules A and B at the Port of Shanghai, China to Los Angeles, CA where the shipments were to discharged and transshipped for delivery at the delivery points identified in Schedules A & B.
9. That on about or after January 19, 2021 Defendant, or its agent failed to deliver to Plaintiff's insured or their agents the shipments of cargo that is identified in Schedules A & B in the same good order and condition as when that cargo was received, but in a damaged and unfit condition, not in accordance with the terms and conditions of the bill of lading issued by Defendants.

10. That on about or after January 19, 2021 Defendants, EverGreen and CIF were put on notice that the contents of the containers identified in Schedules A and B were damaged and would not be delivered in the same good order and condition as received for shipment, and that Plaintiff's damages were in the amount of \$162,108.93 and that it was Defendant's legal obligation to pay those damages.
11. That Defendants were legally obligated to care for and protect Plaintiff's insured shipments during the transit identified in the referenced bill of lading, and Defendants were to deliver said shipments in the same good order and condition as when the shipments were received.
12. That the Defendants failed to protect the shipments identified in schedules A and B during the referenced voyage. As a result of Defendant, EverGreen's breach of contract and negligence Plaintiff has suffered damages in the amount of \$77,217.58 plus costs and interest.
13. That the Defendants failed to protect the shipments identified in schedules A and B during the referenced voyage. As a result of Defendant, CIF's breach of contract and negligence Plaintiff has suffered damages in the amount of \$84,891.35.
14. To date, Defendants have failed to make any payment to Plaintiff for the damages suffered as a result of Defendants' breach of maritime contract and or negligence.

15. In addition to the above total amount of \$162,108.93 Plaintiff is entitled to interest, costs and fees in amounts which will be proved at trial.

WHEREFORE, Plaintiff, National Union Fire Insurance Company of Pittsburgh, PA, as subrogee of USR SUPERCO, Inc., and Berkshire Fashions, Inc. prays as follows:

- A. For a judgment in favor of Plaintiff and against Defendant Evergreen Marine (UK), Ltd., dba "Evergreen Line" and China Int'l Freight Co., Ltd., for the amount of Plaintiff's damages; and**
- B. For a judgment in favor of Plaintiff and against Defendant China Int'l Freight Co., Ltd., for the amount of Plaintiff's damages; an**
- C. For such other and further relief as the Court deems just and proper under the circumstances, together with costs and disbursements of this action.**

Date: January 19, 2022,

JOHN F RYAN COUNSELOR AT LAW



John Francis Ryan

Attorney for Plaintiff

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SCHEDULE B

Plaintiff's Legal Status and Office and Place of Business:

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA was and is a Marine Cargo Underwriter and Insurance Company and business entity duly organized and existing under and by virtue of the laws of the State of New York with an office and place of business at 175 Water Street, New York, NY 10038.

Defendants Legal Status and Place of Business:

Defendant China Int'l Freight Co., Ltd was and is a foreign entity duly organized and existing under foreign law with an office and principal place of business at 2F, No. 90, Section1, Jianguo North Road , Zhongshan District, Taipei 104, Taiwan (R.O.C.) and has designated Distribution, Inc., located at 1999 Harrison Street, Suite 650, Oakland, CA 94612 as its agent for the receipt of service of process.

Plaintiff: National Union Fire Insurance Company of Pittsburgh, PA.

Defendants /Carriers: China Int'l Freight Co., Ltd.

Bills of Lading/Waybill No.: SHA001452930

Container No(s).: TEMU7113853

Consignee: Berkshire Fashions Inc.

Place of Receipt: Shanghai, China

Port of Loading: Shanghai, China

Port of Discharge: Los Angeles, CA

Port of Delivery: Los Angeles, CA

Vessel/Voyage: Ever Liberal, Voy. 0939-039E

Date of Shipment: 12/23/20

Description of Goods: Baseball caps

Nature of Loss: Non-delivery and/or physical or damage

Amount of Loss: \$84,891.35

SCHEDULE A

Plaintiff's Legal Status and Office and Place of Business:

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA was and is a Marine Cargo Underwriter and Insurance Company and business entity duly organized and existing under and by virtue of the laws of the State of New York with an office and place of business at 175 Water Street, New York, NY 10038.

Defendants Legal Status and Place of Business:

Defendant EverGreen Marine (UK) Ltd., d/b/a EverGreen Line was and is a business entity duly organized and existing under foreign law with an office and principal place of business at 160 Euston Road, London, England NW1 2DX.

Plaintiff:	National Union Fire Insurance Company of Pittsburgh, PA.
Defendants /Carriers:	EverGreen Marine (UK) Ltd. d/b/a EverGreen Line
Bills of Lading/Waybill No.:	EGLV142002208875
Container No(s).:	EITU1132216
Consignee:	Staples, The Office Superstore, LLC.
Place of Receipt:	Shanghai, China
Port of Loading:	Shanghai, China
Port of Discharge:	Los Angeles, CA
Port of Delivery:	Rialto, CA
Vessel/Voyage:	Ever Liberal, Voy. 0939-039E
Date of Shipment:	12/23/20
Description of Goods:	Lazy Boy Executive Chairs
Nature of Loss:	Non-delivery and/or physical or damage
Amount of Loss:	\$77,217.58

SCHEDULE B

Plaintiff's Legal Status and Office and Place of Business:

Plaintiff National Union Fire Insurance Company of Pittsburgh, PA was and is a Marine Cargo Underwriter and Insurance Company and business entity duly organized and existing under and by virtue of the laws of the State of New York with an office and place of business at 175 Water Street, New York, NY 10038.

Defendants Legal Status and Place of Business:

Defendant China Int'l Freight Co., Ltd was and is a foreign entity duly organized and existing under foreign law with an office and principal place of business at 2F, No. 90, Section1, Jianguo North Road , Zhongshan District, Taipei 104, Taiwan (R.O.C.) and has designated Distribution, Inc., located at 1999 Harrison Street, Suite 650, Oakland, CA 94612 as its agent for the receipt of service of process.

Plaintiff: National Union Fire Insurance Company of Pittsburgh, PA.

Defendants /Carriers: China Int'l Freight Co., Ltd.

Bills of Lading/Waybill No.: SHA001452930

Container No(s).: TEMU7113853

Consignee: Berkshire Fashions Inc.

Place of Receipt: Shanghai, China

Port of Loading: Shanghai, China

Port of Discharge: Los Angeles, CA

Port of Delivery: Los Angeles, CA

Vessel/Voyage: Ever Liberal, Voy. 0939-039E

Date of Shipment: 12/23/20

Description of Goods: Baseball caps

Nature of Loss: Non-delivery and/or physical or damage

Amount of Loss: \$84,891.35